

Joint Board for the Enrollment of Actuaries

§ 901.20

(f) *Denial of enrollment.* An applicant may be denied enrollment if:

(1) The Joint Board finds that the applicant, during the 15-year period immediately preceding the date of application and on or after the applicant's eighteenth birthday has engaged in disreputable conduct. The term disreputable conduct includes, but is not limited to:

(i) An adjudication, decision, or determination by a court of law, a duly constituted licensing or accreditation authority (other than the Joint Board), or by any federal or state agency, board, commission, hearing examiner, administrative law judge, or other official administrative authority, that the applicant has engaged in conduct evidencing fraud, dishonesty or breach of trust.

(ii) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation or any officer or employee thereof in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading.

(iii) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal taxes or payment thereof, or concealing assets of himself or another to evade federal taxes or payment thereof.

(iv) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(v) Disbarment or suspension from practice as an actuary, attorney, certified public accountant, public ac-

countant, or an enrolled agent by any duly constituted authority of any state, possession, territory, Commonwealth, the District of Columbia, by any Federal Court of record, or by the Department of the Treasury.

(vi) Contemptuous conduct in connection with matters before the Department of the Treasury, or the Department of Labor, or the Pension Benefit Guaranty Corporation including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(2) The applicant has been convicted of any of the offenses referred to in section 411 of ERISA.

(3) The applicant has submitted false or misleading information on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith or in any report presenting actuarial information to any person, knowing the same to be false or misleading.

(Sec. 3042, subtitle C, title 3, Employee Retirement Income Security Act of 1974 (88 Stat. 1002, 29 U.S.C. 1241, 1242), and the Act of August 31, 1951, ch. 376, title V, section 501, 65 Stat. 290, 31 U.S.C. 483a)

[44 FR 11751, Mar. 2, 1979, as amended at 44 FR 68458, Nov. 29, 1979. Redesignated and amended at 76 FR 17774, Mar. 31, 2011]

Subpart C—Standards of Performance for Enrolled Actuaries

§ 901.20 Standards of performance of actuarial services.

In the discharge of duties required by ERISA of enrolled actuaries with respect to any plan to which the Act applies:

(a) *In general.* An enrolled actuary shall undertake an actuarial assignment only when qualified to do so.

(b) *Professional duty.* (1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant generally accepted standards for professional responsibility and ethics.

(2) An enrolled actuary shall not perform actuarial services for any person

or organization which he/she believes, or has reasonable grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(c) *Advice or explanations.* An enrolled actuary shall provide to the plan administrator upon appropriate request, supplemental advice or explanation relative to any report signed or certified by such enrolled actuary.

(d) *Conflicts of interest.* (1) Except as provided in paragraph (d)(2) of this section, an enrolled actuary shall not perform actuarial services for a client if the representation involves a conflict of interest. A conflict of interest exists if—

(i) The representation of one client will be directly adverse to another client; or

(ii) There is a significant risk that the representation of one or more clients will be materially limited by the enrolled actuary's responsibilities to another client, a former client, or by a personal interest of the enrolled actuary.

(2) Notwithstanding the existence of a conflict of interest under paragraph (d)(1) of this section, the enrolled actuary may represent a client if—

(i) The enrolled actuary reasonably believes that he or she will be able to provide competent and diligent representation to each affected client;

(ii) The representation is not prohibited by law; and

(iii) Each affected client waives the conflict of interest and gives informed consent at the time the existence of the conflict of interest is known by the enrolled actuary.

(e) *Assumptions, calculations and recommendations.* (1) The enrolled actuary shall exercise due care, skill, prudence and diligence when performing actuarial services under ERISA and the Internal Revenue Code. In particular, in the course of preparing a report or certificate stating actuarial costs or liabilities, the enrolled actuary shall ensure that—

(i) Except as mandated by law, the actuarial assumptions are reasonable individually and in combination, and the actuarial cost method and the actuarial method of valuation of assets are appropriate;

(ii) The calculations are accurately carried out and properly documented; and

(iii) The report, any recommendations, and any supplemental advice or explanation relative to the report reflect the results of the calculations.

(2) An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(f) *Due diligence.* (1) An enrolled actuary must exercise due diligence—

(i) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity;

(ii) In determining the correctness of oral or written representations made by the enrolled actuary to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity; and

(iii) In determining the correctness of oral or written representations made by the enrolled actuary to clients.

(2) An enrolled actuary advising a client to take a position on any document to be filed with the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity (or preparing or signing such a return or document) generally may rely in good faith without verification upon information furnished by the client. The enrolled actuary may not, however, ignore the implications of information furnished to, or actually known by, the enrolled actuary, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(g) *Solicitations regarding actuarial services.* An enrolled actuary may not in any way use or participate in the use of any form of public communication or private solicitation related to

the performance of actuarial services containing a false, fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim. An enrolled actuary may not make, directly or indirectly, an uninvited written or oral solicitation of employment related to actuarial services if the solicitation violates Federal or State law, nor may such person employ, accept employment in partnership form, corporate form, or any other form, or share fees with, any individual or entity who so solicits. Any lawful solicitation related to the performance of actuarial services made by or on behalf of an enrolled actuary must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(h) *Prompt disposition of pending matters.* An enrolled actuary may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity.

(i) [Reserved]

(j) *Return of client's records.* (1) In general, an enrolled actuary must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her legal obligations. The enrolled actuary may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the enrolled actuary of his or her responsibility under this section. Nevertheless, if applicable State law allows or permits the retention of a client's records by an enrolled actuary in the case of a dispute over fees for services rendered, the enrolled actuary need only return those records that must be attached to the client's required forms under ERISA and the Internal Revenue Code. The enrolled actuary, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the enrolled actuary under State law that are necessary for the client to comply with his or her obligations under ERISA and the Internal Revenue Code.

(2) For purposes of this section, records of the client include all documents or written or electronic materials provided to the enrolled actuary, or obtained by the enrolled actuary in the course of the enrolled actuary's representation of the client, that preexisted the retention of the enrolled actuary by the client. The term "records of the client" also includes materials that were prepared by the client or a third party (not including an employee or agent of the enrolled actuary) at any time and provided to the enrolled actuary with respect to the subject matter of the representation. The term "records of the client" also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current obligations under ERISA and the Internal Revenue Code. The term "records of the client" does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary or the enrolled actuary's firm, employees or agents if the enrolled actuary is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

(k) *Notification.* An enrolled actuary shall provide written notification of the non-filing of any actuarial document he/she has signed upon discovery of the non-filing. Such notification shall be made to the office of the Internal Revenue Service, the Department of Labor, or the Pension Benefit Guaranty Corporation where such document should have been filed.

(l) The rules of this section apply to all actuarial services and related acts performed on or after May 2, 2011.

[40 FR 18776, Apr. 30, 1975, as amended at 43 FR 39757, Sept. 7, 1978; 76 FR 17775, Mar. 31, 2011]